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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,847	06/19/2000	RONEN SANDER	MERCK-2114	4887

23599 7590 09/23/2002

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.  
2200 CLARENDON BLVD.  
SUITE 1400  
ARLINGTON, VA 22201

EXAMINER

PAK, JOHN D

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/23/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application N .

09/581,847

Applicant(s)

SANDER, RONEN

Examiner

JOHN D PAK

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 September 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

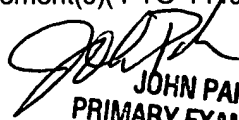
Claim(s) allowed: NONE (see below comments in box 10).

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 18-31.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
JOHN PAK  
PRIMARY EXAMINER  
GROUP 1600

Continuation of 2. NOTE: The originally filed claims recited the reflective materials as comprising "reflective particles of at least one substance." The amended claims then recited the reflective materials as comprising "at least one interference pigment." The claims have been searched and examined three times based on such claim language. Now, after final rejection, applicant introduces different terminology, "pearl luster pigment." This is a new terminology that was not part of any claim language before. The new claim language is deemed untimely at this point in the prosecution. First, It is a matter of some consideration as to whether this is new matter -- just because some of applicant's examples happen to be pearl luster pigments does not necessarily mean that applicant has adequate descriptive support for all other pearl luster pigments (to be used as the active agent in the invention). Second, because the terminology is new to the claims, it goes without saying that the claims with the new terminology have not been adequately searched and considered in light of the new terminology. For these reasons, applicant's amendments are deemed untimely at this stage of the prosecution .

Continuation of 10. Other: Applicant was given notice in the last Office Action that the term "interference pigment" would be deemed to constitute new matter if applicant maintains the position that it has a specialized meaning that is above and beyond "pigment that provide interference." The Examiner pointed out that the term "interference pigment" was not specifically disclosed in the originally filed disclosure. Therefore, the Examiner stated that only its ordinary meaning, i.e. pigment that provides interference, is supported. As applicant maintains said position regarding "interference pigment," claims reciting "interference pigment" are not in allowable form because they do not find adequate descriptive support from the originally filed disclosure. The Examiner attempted to resolve such matters by telephoning Mr. Sopp, but was informed by his voicemail greeting that he would be unavailable until 9/25/02. Due to the necessity of having to act on this after final case promptly, the Examiner had to send out this Advisory Action. Applicant is invited to telephone the Examiner to expedite the further handling of this case, if appropriate. .